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NOTES OF THE WEEK

A Great Judge

The Rt. Hon. Sir Travers Humphreys, who died on February 20 at the age of 88, will long be remembered as one of the outstanding figures of the High Court, and in particular as a great judge of the criminal law. He came of a well-known family of London solicitors, was educated at Shrewsbury School and Trinity Hall, Cambridge. Attaining in particular academic distinction at the university, he was called in 1889 by the Inner Temple and almost immediately attracted to himself a flourishing criminal practice in London. In due course, he built up the leading reputation at the criminal bar and took part in many of the great trials of his time at the Old Bailey, including those of Oscar Wilde, Crippen, Seddon, and G. T. Smith. Amongst his most celebrated prosecutions were Sir Roger Casement, Horatio Bottomley and Bywaters and Thompson. His cases covered a colourful patch of English history, and were described in an entertaining book written by the Judge in 1946 called *Criminal Days*. His professional advancement kept pace with his cases. In 1905 he was appointed Counsel to the Crown at the Middlesex and North London Sessions, and in 1908 Junior Counsel to the Crown at the Central Criminal Court, subsequently (in 1916) becoming Senior Counsel. He was also appointed to the recordership of Chichester in 1921, and Cambridge, in 1926.

He was elevated to the King's Bench in 1928 in unusual circumstances, for such a promotion had never before come the way of a purely criminal advocate and still less one who had not taken silk. He was then regarded as the successor to Mr. Justice Avory, who had been the leading expert in criminal law on the High Court Bench. He made a great contribution to the administration and exposition of the criminal law, both when presiding at Assizes and when sitting as a member of the Court of Criminal Appeal.

During his long career at the bar, especially as Treasury Counsel, he was distinguished for invariable fairness and moderation, and these qualities were displayed equally when he became a Judge. As counsel he could always open a complicated case in a comparatively short speech with such exceptional lucidity that everyone concerned immediately appreciated the essential facts. A clear and pleasant voice was another of his many gifts. When it came to summing up to a jury, his clearness of thought and expression, coupled with his patience and courtesy proved of the greatest assistance to them, and on at least one occasion a jury expressed its thanks to him. He was deservedly respected, and by his many friends he was held in warm affection.

The late Lord Porter

We announce with regret the death at the age of 79 of Lord Porter, who was a Lord of Appeal in Ordinary between 1938 and 1954.

The Right Honourable Sir Samuel Lowry Porter, Baron Porter of Longfield, Co. Tyrone, G.B.E., was born in 1877.

He was educated at Emmanuel College, Cambridge, and called to the bar by the Inner Temple in 1905.

After he was called, Lord Porter practised on the Oxford Circuit on which he later became recorder of Newcastle-under-Lyme (1928) and Walsall (1932). After a while he transferred his attentions to the Commercial Court in London where he established a reputation as a sound lawyer and advocate, taking silk in 1925.

In 1934, he was appointed a Judge of the King's Bench Division and in this capacity presided over the well-known Budget Leakage Inquiry in 1936. It was after this tribunal published its report that Mr. J. H. Thomas resigned his office as Minister for the Dominions.

In 1938 the late Judge was appointed a Lord of Appeal in Ordinary and sat regularly with his brethren to hear appeals in the House of Lords. One of the most interesting of his opinions was delivered on the appeal in 1946 of " Lord Haw-Haw " (William Joyce) against his conviction for high treason. The appeal was dismissed but Lord Porter delivered a dissenting opinion saying that there was no evidence that Joyce had kept his British passport for use after September, 1939. In the words of *The Times*, Porter was " of a judicial temperament, a sound lawyer, quiet but forceful in manner and courteous to all who came before him.

He was considered by many to have been one of the ablest of the King's Bench Judges. His pale features, slim figure of medium height and slight scholarly stoop discounted a robust physique, but he was active and wiry, possessing the necessary strength for the arduous life of the bar."

Notes of Evidence on Appeal

In the Queen's Bench Division on February 10, the Lord Chief Justice made a statement about the supply of copy notes of evidence to quarter sessions on an appeal from a magistrates' court. Referring to *R.* v. *Grimsby, JJ., ex parte Fuller* [1955] 3 All E.R. 300; 119 J.P. 560, Lord Goddard said all that the Court meant was that it was undesirable that while trying an appeal, the justices should always have the notes taken below before them unless it became necessary to see what a witness had said or what had transpired in the Court below. But the Court had not had in mind that it might often be necessary for the chairman to have access to the notes before the hearing to enable him to decide an application for legal aid, to estimate the length of an appeal when he was setting the day's list, and perhaps for other matters. The Court hoped, therefore, that clerks to justices would send their notes to the clerk of the peace so that they could be shown to the chairman or recorder before the hearing of the appeal, or in case of need, to the Court during the hearing.

It appears that the Society of Chairmen and Deputy Chairmen of Quarter Sessions had called attention to a diversity of practice in this matter.

As we said in our note at p. 712 of last year's volume, the clerk is not required by the Magistrates' Courts Rules to supply such copies, as they are not among the documents specified in r. 58. In view of the pronouncement of the Lord Chief Justice, with which other judges concurred, it will no doubt be thought desirable to amend r. 58, and in the meantime clerks to justices will naturally treat the pronouncement as if it were a direction.

Guardianship of Infants: Maintenance

Although s. 3 of the Guardianship of Infants Act, 1925, provides that in ordering a father to pay maintenance to the mother of the infant the court shall order such amount as, having regard to the means of the father, it may think reasonable, it was decided in *Re T* (*an infant*) [1953] 2 All E.R. 830, that regard should also be had to the means of the mother.

This has in fact been the practice of magistrates' courts for many years, and the Court of Appeal in *Re W and Another* (*infants*) [1956] 1 All E.R. 368, has approved the decision in *Re T*, *supra*, and upheld the practice. The Master of the Rolls observed that the means of the father must not be regarded as an exclusive standard. The Court held, however, that there might be circumstances (*e.g.*, if the mother was at work, the child young and delicate and with no one to look after him, and the husband's means sufficient to enable both to be supported) where the mother's means should not be a criterion.

Lay Justices and Domestic Proceedings

We have never subscribed to the suggestion sometimes made that difficult matrimonial cases are rather beyond the capacity of a lay bench and should always be heard by a stipendiary magistrate. In our opinion, cases between husband and wife are well suited for hearing by a bench on which both sexes are represented, assisted when necessary, on matters of law, by a competent clerk. Men and women with experience of life and equipped with good sense and a knowledge of the basic principles of the law, can deal quite satisfactorily with a type of case in which many of them become keenly interested and find opportunities for a form of social service.

In the course of delivering judgment dismissing a husband's appeal against an order made on the ground of persistent cruelty, Collingwood, J., in *Sleightholme* v. *Sleightholme* (*The Times*, February 17) said the justices had been referred to the case of *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875; 116 J.P. 226, and had in their reasons shown a very nice appreciation of the implication of that judgment and it was impossible to quarrel with their decision.

The President, concurring, called attention to the provisions of s. 56 (2) of the Magistrates' Courts Act, and said that the findings of the particular Court under review were in no way detracted from the fact that two women justices were sitting with regard to a course of conduct in which it was alleged that a husband domineered in what were essentially domestic matters.

The case was evidently one of some difficulty, the alleged cruelty being of the kind usually described as mental. The justices, said Collingwood, J., had been satisfied that the husband had made a determined effort to dominate the wife and break her spirit.

Seven Years Absent

The fact that one party to a marriage has been continuously absent from the other for seven years or more may be an important fact in both criminal and civil proceedings. Upon a charge of bigamy such absence, coupled with the fact that the defendant had no knowledge that the other party to the first marriage was alive during that period, is a defence. Under s. 16 (2) of the Matrimonial Causes Act, 1950, which deals with proceedings for the presumption of death and dissolution of marriage, the fact that the other party to the marriage in question has been continually absent from the petitioner for seven years or more and that the petitioner has no reason to believe that the other party has been living within that time, is made evidence of death until the contrary is proved.

In proof of absence of knowledge or belief, it is usual to give evidence about inquiries that have been made and perhaps to call witnesses who would have been likely to see or hear from the absent person if he were alive. In *Ward* v. *Ward* (*The Times*, February 10) the Court of Appeal considered the question of presumption of death in relation to matrimonial proceedings.

In the course of delivering the judgment of the Court, Singleton, L.J., observed that the authorities on the subject were set out in the judgment of Sachs, J., in *Chard* v. *Chard* [1955] 3 All E.R. 721, and said that a long series of decisions showed that if a person disappeared for more than seven years and if sufficient and proper inquiries failed to yield any traces of him in the place or places in which he would be expected to be if alive, and among the people with whom he had associated, it might be presumed he was dead. In any such case the question must be "What is the proper inference to draw from the facts proved?"

Looting a Ship

A Norwegian tanker which had been aground on the Pentland Skerries for some days was found to have been looted to a considerable extent, and police inquiries are going on. A number of cabins were broken into, and property of various kinds was taken. The chief constable of Orkney described it as disgraceful that the personal effects of shipwrecked seamen should be looted in that way, and said it cast a reflexion on the honesty and good name of people in the North, particularly from the point of view of foreign seamen wrecked on our shores.

In this country stealing from a wreck is a serious offence dealt with in s. 15 (3)

of the Larceny Act, 1916, which provides that any person who steals any part of any vessel in distress, wrecked, stranded or cast on shore or any goods, merchandise or articles of any kind belonging to such vessel shall be liable to imprisonment not exceeding 14 years.

We hope and believe that it is no longer necessary to invoke the provisions of s. 47 of the Malicious Damage Act, 1861, under which any person who shows false lights or in certain other ways attempts to endanger or cause the loss or destruction of any vessel, is liable to imprisonment for life. The days of the wreckers are over, but the section is still in force.

Breach of Probation Order: Procedure at Hearing

When a probationer is brought before a court in respect of an alleged failure to comply with a requirement of the order or because of his conviction for a further offence during probation, the court must give him proper opportunity to dispute facts, to cross-examine witnesses, and to give and to call evidence. The facts are not very often in dispute, but if they are, the principle of a trial must be observed. Cases in point are *R.* v. *Pine* [1932] 24 Cr. App. R. 10; *R.* v. *McGregor* [1945] 2 All E.R. 180; 109 J.P. 136; and *R.* v. *McGarry* [1945] 30 Cr. App. R. 187.

In *R.* v. *Devine* (*The Times*, February 14) Byrne, J., when delivering the judgment of the Court of Criminal Appeal repeated this principle observing that the proceeding was a trial, even though there was no jury. The case should be proved and the defendant should be asked if he wished to call witnesses. When he was arraigned the charge should be put to him plainly and in detail and he should be asked if he admitted it.

Army Characters

Further to our note at p. 112, *ante*, we see that this matter has been made the subject of a parliamentary question. The Parliamentary Under-Secretary to the War Office in his reply stated that such a mistake occurred at a period when large numbers of men were being discharged from war-time service. Everything practicable was now done to ensure the accuracy of Army discharge certificates.

Feuds Between Drivers

It is very much to be hoped that there is no substantial foundation for an allegation said to have been made during a court hearing of a charge of dangerous driving. A London Transport driver was alleged to have overtaken and collided with a taxicab. The omnibus driver is stated to have said that the cab swung over the crown of the road and that he took the view that the cab driver was deliberately trying to prevent his passing. The omnibus driver was fined £15, and his licence was endorsed.

The most disturbing feature in the case, which causes us to take notice of it, is the allegation said to have been made by the bus driver, " we have an enormous amount of trouble with taxis. The taxi driver will not let us pass." The cab driver is reported as saying, after the hearing, " Yes, there is definitely a feud between us." We sincerely hope that this is not true. It would be quite intolerable to have two classes of professional drivers, who have of necessity to drive in busy traffic as do omnibus and cab drivers, regarding one another as enemies and taking any opportunity that offers to score off one another. We imagine that any court which had evidence that a driving offence was conduced to by feeling of this sort between two drivers would regard the offence as being an aggravated one and would impose an appropriate penalty and make use of any power of disqualification which it possessed. The roads are quite dangerous enough in ordinary circumstances without their being turned into miniature battlegrounds.

An Altered Document

If an order or other document is to be the subject of review by the High Court, it is obvious that such document should be produced to the High Court without alteration, even if it is discovered that some mistake was made in drawing it up. However, this was not realized by an official whose conduct incurred the displeasure of the High Court upon the hearing of applications for orders of *certiorari* in the case of *R.* v. *Stokesley, Yorks. JJ., ex parte Bartram* (*The Times*, February 16).

An assistant clerk to the justices who had been present in court when an affiliation order was made some years earlier, was going through the papers in connexion with the recent proceedings, in which affidavits were being supplied to the High Court. He then realized that in the original order words were left in which should have been struck out, so he deleted them and he had also altered the amount of expenses and costs. Having stated this to the High Court he expressed the distress he felt now that he recognized that he should have left the order as it was and not have attached an altered order to the affidavits.

The Lord Chief Justice described the action of the assistant as a very serious matter and ordered him to pay the extra expense that had been caused. He said, however, that the Court was inclined to attribute the matter to lack of experience.

It appeared that in the order as originally drawn up, printed words were left in indicating that the defendant in the bastardy proceedings had appeared, and that evidence had been tendered by him, though he was not, in fact, present. These were the words which had been subsequently deleted.

No doubt the assistant clerk thought he was doing right when he made the alterations so as to make the statements in the order accord with the facts. As, however, the order and the jurisdiction of the justices to make it were being challenged it was not for him to attempt to rectify the order. Altering documents is always a matter that needs careful consideration because it is often quite unjustifiable.

Modern printed forms with all possible alternatives inserted so that what is inapplicable may be struck out are very convenient. Great care is necessary, however, in their use lest matter is left in that ought to be struck out, or something is struck out that ought to remain. Important documents should always be carefully checked before signature.

Refusal to Destroy Dog

The *Daily Express* reports a case in which a man, having been ordered to have two dogs destroyed because it was held that they were dangerous and not under proper control, has said he will never have the dogs destroyed and will not pay the daily penalties of £1 a day in respect of each dog. Already, it is stated, these fines amount to £42, and as the man is said to be in receipt of £8 a week he is finding it difficult to keep wife and family, let alone the dogs.

It is easy to feel sympathy with a dog owner who does not want to part with a dog which is, as in the present case, said to be friendly and safe with children. In the case referred to in the *Daily Express* there is the additional fact that the dogs were to be used for profitable breeding purposes. What magistrates have to think of, however, is the safety of strangers, and if the dog appears to them to be a danger they may reluctantly come to the conclusion that an order must be made.

The newspaper report does not say whether or not there has been an appeal to quarter sessions. If not, perhaps the defendant might have been persuaded that

instead of a blank refusal to comply with the order of the court and all that it entails, he should have considered the alternative of such an appeal. He is out of time, but he could apply to quarter sessions for an extension under s. 84 of the Magistrates' Courts Act.

The right of appeal is conferred by s. 1 of the Dogs (Amendment) Act, 1938, as amended by the Criminal Justice Act, 1948.

A Commissioner's Duty

We have been asked whether a commissioner for oaths is under any obligation to insist that a declarant shall read aloud to him a statutory declaration before it is executed. The query was no doubt prompted by a realization that many such declarations are complicated and technical; they will have been drawn up by another person than the declarant, and the latter may have only the most general idea of what it is all about. It would, however, be a great burden on a commissioner, in return for the modest fee received, if he had to make sure of the declarant's understanding—and the reading aloud of a document (which is often couched in unfamiliar language) would certainly be no guarantee of this. We therefore advised that it was enough for the commissioner to make the declarant state that it was his declaration; and that he believed it to be true. We have to express our thanks to the Law Society (whom we consulted in the matter) for sending us an extract from their secretary's Lectures on Professional Conduct and Etiquette. This extract is to the same effect as our own opinion, and will be helpful to readers who are not familiar with the lectures. It reads as follows:

"The general principle is well known and is that, subject to the exception as to blind and illiterate persons stated in R.S.C. Ord. 38, r. 13, all that a commissioner is required to do is to ascertain that the deponent is actually in his presence by inquiring whether the signature to the document before him is the name and in the handwriting of the deponent; that the deponent is apparently competent to depose to the affidavit; and that he knows that he is about to be sworn by the commissioner to the truth of the statements it contains, and that the exhibits (if any) are the documents referred to. If the answers to the commissioner's questions on these points are satisfactory, the oath may be administered. The responsibility for the contents of the affidavit rests with the deponent and the solicitor who prepares it. Obviously the commissioner cannot possibly determine whether the deponent understands every statement made in the affidavit unless he himself has read it to the deponent and has mastered its contents, and that task is not considered by the council to be within the duties of a commissioner. This general principle is subject to the qualification, however, that it is the duty of a commissioner to satisfy himself that the oath is in form and upon the face of it an oath which his commission authorizes him to administer."

Education

A clergyman with many years of experience of the hopfields is reported to have protested against the prosecution of a number of parents for not sending their children to school, the reason being that they were away hopping. Hopping was, he said, a splendid form of education.

So it may be, from the point of view that it teaches young people to mix well under novel conditions, to work hard, and to adapt themselves to strange surroundings—all of which is useful training. It is not, however, the kind of education with which the Education Acts deal, and education authorities have to carry out the law as it is. Whether the law is wise or not is not a question for them.

Under the earlier Acts, a defence of reasonable excuse, within limits, for absence was available, and there was some case law on that point. Today the law has been tightened, and of the defences specifically provided, one is, not reasonable excuse, but unavoidable cause. Going hopping can hardly be described as an unavoidable cause.

I.S.T.D.

We have received a preliminary list of some of the forthcoming fixtures arranged by the Institute for the Study and Treatment of Delinquency. These include a lecture on March 14 by Dr. Denis Carroll on "The Function of the I.S.T.D.," which should prove of special interest to magistrates who have not yet become acquainted with the objects and methods of the Institute. On March 17 there will be a one-day conference in Exeter, dealing with the problems of the maladjusted and pre-delinquent child in the classroom. The lecturers are Dr. Edna Balint and Mr. R. C. Dove. From April 20–22 there will be a week-end conference in Eastbourne, "Cruelty to Children." A psychiatrists' week-end course has been arranged at Farnham from June 15–17. The subject is "The Problem of Homosexuality," and the lecturers include Dr. Peter Scott and Dr. L. H. Rubinstein. There will also be an autumn week-end conference on "The Adolescent Delinquent," from October 26 to 28.

Inquiries may be addressed to Miss Eve Saville, I.S.T.D., 8 Bourdon Street, Davies Street, W.1.

The Slum Clearance (Compensation) Bill

This Bill, which was ordered to be printed on February 8, 1956, is designed to relieve the most acute cases of financial hardship which arise in the course of slum clearance.

First of all the Bill will help owner-occupiers who in times of severe post-war housing shortage were forced to buy worn out houses in order to get a roof over their heads. They may have paid scarcity value prices for these houses and looked after them well but under the existing law they may be entitled to nothing more than bare site-value. The new Bill provides that (subject to certain qualifying residential conditions) that an owner-occupier of an unfit house bought since 1939 will if the house is compulsorily purchased (or demolished or cleared) receive compensation at the same rate as if the house had not been declared unfit. The sort of hardship which those provisions are designed to cater is illustrated by the following case. An ex-serviceman paid £450 for a house for his own occupation in 1946 and raised a mortgage of £350. Under the present law he would receive about £45 (*i.e.*, £15 for the site and £30 in respect of good maintenance). The Bill enables compensation on the basis of current market value.

The owners of small shops or businesses are also faced with similar difficulties under the present law. For example, the case of a builder's labourer who was injured at work in 1950 and spent the whole of his compensation (£700) on buying a leasehold interest in a small shop. The lease had an unexpired term of 20 years. Under the existing legislation the lease-holder would receive nominal compensation of a few pounds plus an *ex gratia* payment probably not exceeding £50 for loss due to disturbance. Now he will receive compensation on the basis of the current market value of his leasehold interest together with a payment as of right for disturbance.

The Bill also enables the Minister to adjust the allowances payable to owner-occupiers under the Housing Act, 1936, in respect of well-maintained although unfit houses. Where accounts of expenditure cannot be produced the rates of compensation are still, under the current law, based upon the building costs of 20 years ago which, of course, are greatly exceeded by prevailing prices.

EARLY VICTORIAN MAGISTRATES—II

By THE REV. W. J. BOLT, B.A., LL.M.

Was it the exaggeration of Puritan prejudices, or was it the genuine grievance of a small community against its local bigwigs, that impelled a subscriber to consult the editor in 1848 at p. 461 ? "Corporations Municipal; Misconduct of Magistrates; Ancient Charter. The town of C is a borough under the government of a mayor, justices, etc., appointed as such under an ancient charter. The corporate body are, for the most part, condemned drunkards, and not a few of them illiterate. Oftentimes, the chief magistrate of the town is seen in the public streets, as the common folks say, 'blind drunk.' This character was fully illustrated one evening this week. Some few days ago, two disorderly characters were fighting in the public streets with their coats off; and one of the magistrates, a looker on, when spoken to as to the impropriety of such a sight, instead of causing the parties to be locked up, assisted in putting on their coats. This is sufficient to testify the respectability of the party. Can you suggest any proper mode how the misrule and improper conduct of these worthies may be brought before Her Majesty's government, so as the rule and government of the town should be put in the hands of parties more enlightened and respectable. Do you think a petition from the clergyman and other respectable inhabitants of the town would have the proper effect, or cause Her Majesty's government to appoint a respectable inhabitant to act as a borough magistrate in conjunction with those whose appointment is under the charter?"

Whether or not there was any substance in such reflexions, magistrates were cited in the higher courts with a frequency which would agitate public opinion today. In 1838, there was the curious case of *Queen* v. *Eagle*.

A brief summary at p. 184 states, "in this case a criminal information was filed against the defendant, who is a barrister, and magistrate for the town and borough of Bury, and the same came on for trial. It will not be necessary to enter minutely into the case, as no point of law was involved in it. It lasted from 11 in the morning till 10 at night. The jury retired and were locked up all night, and discharged at 8.30 in the morning without having been able to agree in their verdict, the whole of the jury except one being in favour of the defendant."

Another stage of the same proceedings is reported more fully at p. 344. "Court of Queen's Bench. *Queen* v. *Eagle*. Rule granted for a criminal information against a justice charged with issuing a warrant of apprehension to prevent a party from voting at a parliamentary election. Sir F. Pollock moved for a rule to show cause why a criminal information should not be filed against the defendant, a magistrate for the borough of Bury St. Edmunds, for having issued a warrant to apprehend a man with a view to prevent him from voting at the election of members of parliament for the borough. The affidavits set forth that in July, 1827, the voter in question was brought before the magistrates in a case of bastardy and was then ordered to pay a sum of money for the support of the child. These payments he made for some time, but in 1834, he was again brought before the magistrates, and gave security for the due payment of the money which had then become in arrear. He afterwards went on paying for some time, but again fell into arrear; and on July 22, 1837, he was apprehended on the warrant of a magistrate, the defendant, without having been first summoned. There were many cases which showed that such a proceeding was irregular, and the defendant, being a barrister of many years' standing, must necessarily have been acquainted with those cases. The man was apprehended on Saturday, the 22nd, and the election took place on Monday the 24th. He was apprehended on the complaint of a person who was not an overseer but merely an officer of the board of guardians, of which board the defendant was the chairman. The object of the apprehension at that particular time was believed to be, to deprive the man of his vote, and Mr. Eagle was sworn to have taken a very active part in the election. The man did vote, as money was believed to have been paid; but the conduct of the magistrate was not the less reprehensible, for he had lent himself to such a purpose as that of forwarding election interests by the abuse of the power of his office. Rule granted." I have not succeeded in tracing the sequel.

But there were magistrates who won nothing but praise for their services. In 1840, at p. 412, eulogies were poured upon one veteran who was retiring from the bench. The activity which won so much praise was his share in reforming the administration of the local prison; and we recall that this was a prominent part of magisterial routine.

"Lewes midsummer sessions. Vote of thanks to William Seymour, Esq. With unfeigned pleasure we lend our columns to further the circulation of the following most deserved tribute of respect to this gentleman, who has, so long and so beneficially for the public, acted as magistrate for the county of Sussex." Amongst his achievements then cited, was his sponsorship of the improvements in the House of Correction at Lewes, and particularly his introduction of the separate-cell system. One speaker stated that "his great object was to promote public justice, and to promote it in connexion with the improvement of persons who had offended the laws. He did this by the measure which was carried on his proposition, for making separate cells, and I think that there was no one measure which the magistrates had adopted so much to the public good as that was. But for this, they would have much more crime, and the county must, of course, have been put to much greater expense. In the economical point of view, Mr. Seymour's service had been invaluable, but there was a principle involved in the measure which was of much greater consequence, the principle of morality. The separation of the prisoners had, more than anything else, contributed to the improvement of their morals; and I cannot but think it will tend to the happiness of Mr. Seymour in his last moments, to think that he has effected so much good, not to the public only, but also to the unfortunate class of persons whom we are called upon to punish."

Then there were magistrates with a grievance, who invoked the assistance of the law and the press to vindicate themselves and redress their wrongs. In 1838, the editor of the "J.P." publicly championed the cause of a clerical magistrate who was impugned.

At p. 72, "Our readers will have probably noticed proceedings which have been carried on in the Court of Queen's Bench, by the Rev. John Sneyd, a magistrate residing at Leek, against Mr. C. C. Wilson for libel. A report has been circulated in the daily and other papers that Lord John Russell had intimated to Mr. Sneyd, that his resignation of the office of justice of the peace would be accepted if tendered. The report is wholly untrue. Mr. Sneyd has certainly resigned, but, to use his own words, 'without the slightest compulsion or intimation of any person.' He has addressed a letter to Lord John Russell on the subject,

and, with his lordship's consent, will publish it. He has forwarded to us his letter to the *Manchester Times*.

"'Basford Hall. Sir, In your paper you have published a false and malicious libel against me as a magistrate then acting for the county of Stafford, asserting that the libels for which Mr. C. C. Wilson is now suffering the punishment awarded him by the court of Queen's Bench, were in fact true, and that Mr. Wilson had not been permitted to prove the truth of those libels. I do most positively assert that the libels were from beginning to end, a tissue of malicious falsehoods; and Mr. Wilson had an opportunity of showing the truth of the libels by affidavit, before the rule was made absolute; and this is a fact well-known to all persons acquainted with the expensive legal proceedings which it became my duty, as a public character, to institute in defence of the dignity of the bench. The writer of the libels also asserts that I have been induced or rather compelled to discontinue acting as a magistrate in consequence of a letter said to be received by me from the Home Secretary intimating that, in the case of my tendering my resignation as one of Her Majesty's justices of the peace, he should advise Her Majesty to accept it. This is not only totally devoid of truth, but without the slightest foundation . . . I trust and believe that I have convinced all whose good opinion is worth possessing that, at great personal sacrifice, I have not only done my duty in supporting the dignity of the bench, but have also entirely cleared myself from every one of the very numerous scandalous and malicious imputations heaped upon me by Mr. Wilson, both by private letters to my friends, and to the world at large through the medium of handbills industriously circulated in my neighbourhood and through the public prints. If anything was wanting to convince them of the good opinion of the public towards me, and its sense of my conduct, the slightest spark of uncertainty must be for ever quenched before the numerous petitions which have been presented me from many quarters, to continue my services, and the munificent and highly gratifying testimonials, towards which persons of all classes and of every shade of political and religious feeling have, in the most flattering way, contributed. . . . Assailed as my character has been again by you, and upon the very grounds on which it had been attacked by Mr.Wilson, and in defiance of the solemn decisions of the judges of the court of Queen's Bench, I find myself again compelled to seek redress from the laws of my country, with a view to deterring you and others from similar offences, and have determined on giving my attorney instructions to take legal proceedings against you unless you offer me forthwith as ample an apology, and cause the same to be published in all those papers which you may find have copied your libel. You will also, if you are not the author of the libel, supply me with the name and address of the author, so as to enable me to deal with him as he may deserve'."

The headnote of a report at 1837, p. 251, reminds us of the ancient action on the case and its mysterious frontiers. "Court of Exchequer. *West* v. *Smallwood*. Where a magistrate has a general jurisdiction over the subject-matter which is brought under his notice by a complainant, and grants a warrant, if it should turn out on investigation that the warrant is illegal and without foundation, the complainant is not liable in trespass, but in case only; while the magistrate is liable in trespass."

The editorials in the first volume frequently harp on the anomalous liability which the law imposed on the unpaid magistrate. Thus, at p. 594, "It is well known that magistrates as well as their clerks labour under a pecuniary disadvantage. They form a solitary exception to every other judicial functionary, that they are pecuniarily responsible for mere mistakes in the law, for a construction put upon some statute in itself almost incomprehensible, a construction too frequently quite as reasonable as that of the authority by which it is overthrown."

The accession of Queen Victoria to the throne raised scruples about the value of the oaths of office, whether they were necessary to magisterial acts, and whether an oath of allegiance sworn to a deceased sovereign has any validity after the accession of his successor.

The answer is given to a query at p. 237, "There is no doubt that a justice of the peace may vote in the appointment of a clerk, although he has not taken the oaths." And at p. 270, "Magistrates' reappointment under the new commission, if therein, may act before being sworn. They are required to take the oaths within six calendar months after admission to their office and they may act in the interim without being subject to the penalty. Otherwise it might happen in some counties that not a single magistrate might be capable of acting."

The law was fastidious over the qualifications of the bench, and nice points were frequently submitted to the courts and to the editor. They teem in the first volume.

A report at p. 359 begins, "*Jones* v. *Edwards*. Where A by her will devised certain personal property to trustees upon trust, to pay to her married daughter the dividends thereof for her sole use during her life, and afterwards to her husband for his life, with remainder over to a third person, and the trustees, wife, husband, and remainderman by a joint deed, agreed to invest the money so devised in land which was by the same instrument, conveyed to the wife and husband for their joint lives, with remainder as before. Held, that the husband took thereby such an estate for life as would satisfy the provisions of the 12 Geo. II, c. 20, s. 1, and confer on him a qualification to act as a justice of the peace, the value of the said estate having been found by a jury to be more than £100 *per annum*. This was an action of debt against the defendant to recover the penal sum of £100 under the 18 Geo. II, c. 20, commonly called the qualification Act, for acting as a justice of the peace without a proper qualification. At the trial before Mr. Justice Williams at the spring assizes for the county of Merioneth, it was agreed that the jury should return a verdict for the defendant, with a special finding that the estate in respect of which the defendant claimed to be qualified, was worth £105 *per annum*, and that the plaintiff should have liberty to move to take the opinion of the full court upon the point of law." Elevation to the bench is not such an obstacle-race today.

Nor is an aspirant today flummoxed by such a worry as one sent to the editor at p. 396. "I am thus circumstanced. I have a freehold assessed to the poor-rate at £20, and a copyhold at £55. Both are in my own occupation, and are certainly rated at their outside value or somewhat beyond. Can these two be coupled together to make a qualification, and, if they can, is the value sufficient?" His hopes were rudely dashed. "Our correspondent has not an estate of sufficient value to constitute a qualification."

Another complication, that the quota of land held must reach the value in one county, is echoed in the inquiry at p. 428. "A is placed in the commission of the peace for the county of B. He swears to his qualification as arising from certain freehold land in the parish of C in the county of B. Shortly after, he sells his estate in the parish of C, by which he qualified, and purchases another estate of equal value in the parish of D in the county of B. Is it necessary that A must take, or can he, another oath of qualification, before he again acts as a magistrate for the county of B? Or must he be again placed on the commission of the peace in the usual way for the county of B? Or may he go on acting for the said county of B, his qualification not being the one he originally swore to at the quarter sessions? T."

The headnote of a report at 1839, p. 5, runs, "Where a clergyman whose living has been sequestrated, but who has been

appointed by the bishop to officiate as curate of such living with a stipend of £120 a year, with the privilege of living in the vicarage house, is liable to an action under 18 Geo. II, c. 20, s. 1, for the penalty for acting as a justice of the peace without being duly qualified according to the provision of that Act."

AGORACRITOS

At p. 66, *ante*, we noticed decisions about a Sussex sausage and a Wiltshire motorist. Superficially dissimilar, these were united not only by the accident of being before the same Divisional Court, but also by springing from determinations of fact in the magistrates' courts, which the prosecution attempted to overturn upon Case Stated. This attempt involved convincing the Court that there was a point of law. The Wiltshire motorist in *Thompson* v. *Wigley* had been charged with driving without due care and attention. The justices were of opinion that defendant had exercised sufficient care in difficult circumstances. Before the Divisional Court the defendant did not appear and was not represented. Counsel for the prosecution argued that the facts were such that no doubt could have been left in the minds of reasonable magistrates, and that they ought to have found the defendant guilty, but the Court refused to interfere. There was no presumption to be drawn and the magistrates were entitled to treat the issue as one of fact.

From *The Times* report of the Sussex sausage case, *Thrussell* v. *Whiteman*, it seemed that professional analysts had agreed among themselves that a sausage was not entitled to that name unless it contained a proportion of meat fixed by such agreement. To settle its entitlement would, however, be a legislative process, not for the courts; still less for expert witnesses.

There are two essential questions, what did the purchaser demand and what did the tradesman supply? Both are questions of fact; if they are kept distinct, the difficulty which has arisen over sausages and other compounded articles of food will disappear. The question what was in fact supplied is capable of positive proof, and the most important evidence is an analyst's certificate: *see Webb* v. *Jackson Wyness, Ltd.* [1948] 2 All E.R. 1054; 113 J.P. 38: *Broughton* v. *Whittaker* [1944] 2 All E.R. 544; 108 J.P. 75. Section 110 of the Act allows the defendant to challenge this evidence by calling the analyst for cross-examination, or by producing contrary evidence. If the analyst's certificate is not displaced it is conclusive of the question, what was the nature, quality, or substance of the food supplied? In the Sussex case, there was no dispute about this, and the prosecution amounted in effect to an attempt to make the analyst's certificate conclusive of the other question which had to be determined, *viz.*, what did the customer demand ? We concede here a certain logical difficulty. A sanitary inspector acting under a food and drugs authority and on the advice of an analyst may "demand" in the recesses of his mind what the analyst thinks ought to be supplied, even though he does not in express terms say this to the shopkeeper. The law, however, equates his demand to that of the unlearned man (more often woman) who asks for a pound of sausages, and can not be presumed to be asking for the meat content which an analyst thinks ought to have been used. The defendant said that he could have supplied the full percentage named by the analyst at the same price as he charged, if he had used a lower quality of pork. He had, however, used pork of the best quality and sausages made to the same recipe had sold well without complaint from any of his customers. On these facts the justices found that the substance of the sausages was what the customer demanded. There was comment by the prosecution upon the defendant's not having exercised his right to have the analyst called for cross-examination, but in truth he would, had he done this, have been following the prosecution upon the wrong path, of their choosing.

We respectfully doubt whether full judicial weight attaches to so much of Lord Goddard's judgment, reported in *The Times* of January 17, 1956, as related to the quality of the sausages he consumed at the age of four, but in all essential respects the judgment will be valuable—to magistrates, to the public, and (on a long view) even to local authorities, in that it fills up a gap left by the earlier decisions, and makes the essential quality of the test plainer than in *Webb* v. *Jackson Wyness, supra*. It does not, as we have seen suggested, mean that in future a sausage seller can with impunity supply any proportion of meat, however low. The protection given by s. 3 of the Food and Drugs Act, 1938, now replaced by s. 2 of the Food and Drugs Act, 1955, is not removed. It is still an offence to supply a sausage (equally with other articles of food) to the prejudice of the purchaser, which is not of the nature, or not of the substance, or not of the quality demanded. All the decision does is to show that the magistrates can now decide for themselves what was demanded: they are not bound to presume that the customer demanded, when speaking the ordinary language used across the counter, that which a public analyst would be demanding if he set out in words the formula or specification in his mind. The decision is not at this point wholly free from another logical difficulty, in that in *Webb* v. *Jackson Wyness, supra*, the Divisional Court did say that the hypothetical ordinary customer, who knew nothing about vinegar except its taste and its effect on metal, had to be presumed to be demanding a certain *quantum* of acetic acid, and magistrates were not at liberty to find in fact that the customer was demanding a fluid of lower acid content.

As we said at p. 66, we agree with the Lord Chief Justice, that it would be a good thing if the quantity of meat to be put into a sausage were standardized by some authoritative means. There would then be a presumption that the standard fixed was what the customer demanded. A fixed standard would be helpful to the trade, by relieving the honest and *bona fide* sausage seller from the present risk of prosecution. It seems, however, from the evidence that there might have to be two standards at least, according to the price. If the proportions were the same for all qualities of the ingredients, the result would probably be to increase the price of sausages made of the best meat. Lord Goddard contemplated that the Minister of Agriculture, Fisheries, and Food should make regulations for this purpose. Perhaps this is the only way it can be done, in an imperfect world. But in *Webb* v. *Jackson Wyness, supra*, where there was no legally established standard, the Court attached equivalent importance to a recommendation or pronouncement of the appropriate trade association. In some branches of commerce, and of public administration (for example, in the control of building work by local authorities) great use is nowadays made, for legal purposes, of standards produced by the British Standards Institution. Could not the national organization of the sausage sellers, being "reputable manufacturers," as Lord Goddard said of the vinegar makers in the case last cited, further the cause of industrial self government, by producing standards which, according to price, would determine what the purchaser should be taken to have demanded, instead of calling upon Demos (through his Ministers) to do the job ?

TEACHERS AND THE SUPERANNUATION BILL

[CONTRIBUTED]

There is no doubt that the Government's current Superannuation Bill has provoked the teaching profession almost as much as its prototype which proved abortive some 18 months ago. The question arises—have the teachers the sympathy of the public, in the first place for their opposition to the Bill on general principles, and, secondly, in the methods some of them have adopted in resisting the Government's proposals ? It will be recalled that the ill-fated Bill sponsored by Dame Florence Horsbrugh proposed to raise the teachers' contribution from five to eight *per cent.* The reason for this was an actuarial one, the aim being to guard against the insolvency of the fund. Nevertheless, the projected rise in contributions was somewhat steep and the teachers' protests on that occasion appear in retrospect to have been justified, particularly when it is remembered that civil servants' pensions are non-contributory. On the other hand, it might be countered that a permanent teacher's security of tenure is theoretically better than that of a permanent civil servant, who can be dismissed "at the pleasure of the Crown." Although many regard the Crown's power of dismissal as having become a dead-letter through obsolescence, the recent arbitrary dismissal of a senior valuation officer of the Board of Inland Revenue after his acquittal on a criminal charge came as something of a shock to complacency; also, there have been dismissals on political grounds.

The present Bill proposes merely to increase the rate of contribution from five to six *per cent.*, again on actuarial grounds. The teachers, mainly through their most powerful organ, the National Union of Teachers, to which the majority of the profession belongs, have protested that they have been singled out and that no other public employees pay more than five *per cent.* or have been required to increase superannuation contributions in order to render the appropriate fund solvent. The privileged position of the civil service in this respect has already been noticed. Many local government officers, however, pay at the rate of six *per cent.* and their post-war standards of remuneration have depreciated at least as much as those of the teachers. The teachers have also used the argument that as they have in effect two employers, the Treasury and the local education authorities, the employees' contributions should remain at five *per cent.*, any deficit being met by the two senior partners of the education triangle. This is merely a device to shift the extra burden on to the general taxpayer, who may well think the teacher fortunate in having two sets of employers to help him on the way to actuarial self-sufficiency. On balance, therefore, it is submitted that this initial protest is not justified on the facts.

Before leaving the wider topic of general principles let us discuss whether there would be more public sympathy with the teachers on this issue if their hours were longer and their holidays shorter. At present, local education authority teachers have 14 weeks' holiday a year, made up approximately as follows: six weeks in the summer, three weeks at Christmas and three at Easter, plus a week's mid-term holiday twice a year, generally during the autumn term and at Whitsun. It should be borne in mind that 10 days in this connexion means two working weeks. Primary school teachers work a five-hour day (excluding the lunch period which is discussed below) and a five-day week. Secondary school teachers also have a five-day week but their hours are longer, particularly in grammar schools where the highest traditions of the teaching profession are still to be found and much more voluntary extra work is performed by the staff. There seems to be no recognition by teachers as a whole of their privileged position in this matter of hours and holidays. The permanent civil servant, for example, has to work a 42-hour week and has a maximum leave allowance of six weeks. The hours of the local government officer are slightly better, but his leave allowance is considerably less.

Let us now examine the methods the teachers are using, or proposing to use, to resist the Superannuation Bill. In the forefront, of course, is the much-publicized ban of the National Union of Teachers and the National Association of Schoolmasters on the collection of national savings in schools. As this was announced in December before the end of term it had one rather amusing result: a rush by the children to surrender their savings during the last week of the autumn term. It is clear that the ban does not have the united support of the profession, quite apart from any waverers in the N.U.T. In the past teachers have always opposed any action which might hurt the children placed in their charge and for that reason they have rarely threatened to strike. The only recent occasion of such a threat was in Durham when the intention was thereby to prevent the imposition of the closed shop policy: this was a clear moral issue, not connected with status, and demonstrated the nobility with which the profession can clothe an issue. Whilst the ban on savings does not actually hurt the children, it is submitted that it does not give them a very good example, and that it is contrary to the national interest. One local education authority immediately transferred this duty to the part-time secretaries of schools from the beginning of the spring term, 1956. It is interesting to note that in the area of another authority as many as 30-odd *per cent.* of its schools have never operated savings groups at all. Also, there has been opposition in the past from many teachers to suggestions by National Savings Commissioners that more use should be made of Trustee Savings Bank accounts because these would involve the teachers in extra work.

Other suggestions that have been made*, but not so far as is known yet acted upon, are that teachers should ban meals supervision duties and out-of-school activities such as games supervision. It is encouraging to note that the N.U.T. has not put the weight of its authority behind these somewhat irresponsible suggestions. Nevertheless, several points can be made in connexion with this topic. In the area of one large local education authority, the cost to teachers of a two-course meal without beverage is 1*s.* 8*d.*, the cost to the children being slightly less than half of this sum, with remissions for poorer children. The theory is that the teachers' meals are not subsidized but it would be extremely difficult, if not impossible, to obtain the same meal for the same price in a local café or restaurant. It is clear then that even without undertaking meals supervision duties teachers can obtain a comparatively cheap meal. Teachers who do undertake meals supervision duties obtain a meal free of charge. Some local education authorities employ meals supervisors specifically for this purpose and yet teachers continue to obtain free meals for the part *they* play in meals supervision. The luncheon period lasts for an hour and a half but the meal lasts for barely half-an-hour; such persons as are available, usually, for example, meals supervisors and infant helpers, undertake playground supervision for the remaining hour, during which time the teachers concerned are often free of all duties. It is

*By the National Association of Schoolmasters (*Manchester Guardian*, January 16, 1956).

suggested that the provision of free meals for teachers should be reconsidered, possibly in conjunction with a reallocation of duties to non-teaching staff. It seems inequitable that any teachers should receive free meals when some charge is made for all but the very poorest children, particularly when the comparatively low charge for a teacher's meal is taken into account.

As has been mentioned, a ban on out-of-school activities has been proposed but it has not yet been carried out. In some cases this would be unnecessary: for example, the present writer knows at least one headmaster who has always refused to allow his staff to undertake any out-of-school activities whatsoever, including games on a Saturday morning. This headmaster takes the view that his hours are from 9 *a.m.* to 4 *p.m.* and that he is not paid to work outside those hours. Happily such headmasters —and headmistresses—are the exception rather than the rule, but it is a disturbing thought that such a man should have achieved a position of authority in a school. It is felt that the good sense of the teaching profession and their spirit of fair play towards the children placed in their charge will militate against the implementation of this proposal. Anyone who obtains a living from the administration of the social services has a moral duty to work unpaid overtime when and where necessary, whether he or she is a teacher or an administrator, and in many cases it is still a labour of love to do so.

The Minister of Education, Sir David Eccles, has refused to withdraw his Superannuation Bill and the N.U.T., which represents the majority in the teaching profession, has not advocated the adoption of the more extreme courses proposed. It is to be hoped that the Minister will find it possible to make generous provision for widows' and orphans' benefits when the Bill is amended in Parliament. The Government's move to advance the next Burnham scale award by a year has apparently come to grief, but it seems likely that agreement on new pay scales will be reached before the end of this year. It is for this reason, presumably, that the Government has decided to postpone the operation of the Teachers (Superannuation) Bill from April 1, to October 1. The assumption is that by the latter date the Burnham Committee will have agreed upon increases in teachers' pay and the new increases will have come into operation. If this proves correct, no teacher will at any time be in the position of receiving less money than at present owing to the incidence of a higher rate of superannuation contribution. The comment of Sir Ronald Gould, the general secretary of the N.U.T., on this latest development is interesting. He stated† that the Minister's amendment was clearly designed to secure that the increased contribution should not operate until there had been an increase in teachers' salaries and was, therefore, an acknowledgement that their salaries could not sustain a " cut " even of one *per cent.* As was to be expected, the spokesman of the N.A.S. was rather more belligerent: he said that they found the Minister's attitude inexplicable, since previous Ministers have left the salary question entirely to the Burnham Committee. The approach of the N.U.T. seems the more statesmanlike and it is to be hoped that the unhappy quarrel can now be resolved. The Minister has stood firm on the contents of his Bill but he has not been unyielding, for he is arranging to delay its operation in the hope that the cumbersome machinery of the Burnham Committee can grind into action in time to cushion the blow. The teachers, on the other hand, have staged their ban on the collection of school savings during the spring term, 1956, but have rejected the more draconian measures of a ban on meals supervision duties and out-of-school activities. It seems within the bounds of possibility that a compromise solution is now in sight. Many teachers nearing retirement age are, incidentally, anxiously awaiting the passage of the Bill into law in view of the proposed improvements in widows' and orphans' benefits. For their sake and for the sake of the education service as a whole it is devoutly to be hoped that both sides in the dispute can now swallow their pride and reach agreement.

R.E.C.J.

† On January 31, 1956.

MISCELLANEOUS INFORMATION

LOWESTOFT FINANCES 1954/55

Lowestoft has a population of 44,000 and is the largest local authority in the administrative county of East Suffolk. The penny rate produced in 1954/55 £1,150 and rateable value per head was £6 14*s.* With this relatively high figure the position of the borough as part of the administrative county is a fortunate one: as an independent unit it would hardly have qualified for equalization grant equal to the capitation payment made by the county council, namely £45,000.

In his report the borough treasurer, Mr. J. R. Aspinall, A.C.A., states that the year's working resulted in a deficiency on the general rate fund revenue account of £13,000, which was charged against the accumulated surplus brought forward leaving a credit balance at March 31, of £36,000. The actual deficiency for the year was less than half the original estimate: this favourable outcome resulted chiefly from two factors, the first being a smaller deficiency on the housing revenue account than anticipated due to lower interest and the second being slower progress than estimated on remedial works arising out of the 1953 flood. Mr. Aspinall points out that a substantial sum in respect of these works remains in suspense pending financial settlement with the Government and that the expenditure already incurred, in respect of which only limited advances by way of grant and reimbursement have been received, is proving an embarrassment from the point of view of the council's cash position.

The transport undertaking produced a net surplus of £2,700 leaving a reduced deficiency of £1,900 to be carried forward to 1955/56. The following averages per bus mile summarize the 1954/55 results:

Running costs	23·85*d.*
Traffic receipts	26·79*d.*
Passengers	12
Fares	2·23*d.*

There was a deficiency of £3,157 on all summer seasonal undertakings but beach chairs, beach chalets and beach shops all produced useful surpluses: the good weather of 1955 will undoubtedly have had a favourable effect on the returns for 1955/56.

The corporation owned 1,800 houses at March 31, last: tenants paid £73,000 towards the total revenue expenditure of £122,000, the balance of £49,000 representing subsidies from taxpayers and ratepayers. The position of the largest number built since the war is shown by the following figures:

Type	*No. of bedrooms*	1954/55 *rateable value*	*Net rent* s. d.	*Gross rent* s. d.
Inter-terrace	3	19	20 1	30 3
End-terrace	3	20	20 6	31 2
Semi-detached	3	21	20 9	31 11

In spite of rising prices and expanding services the corporation has managed to avoid heavy rate increases: for four years the rate was stabilized at £1 1*s.* 6*d.*, and for the succeeding three it has been maintained at £1 4*s.* The increased levy has arisen from county council requirements: over the whole seven years charges for borough purposes have shown a declining trend.

MANCHESTER AND SALFORD POOR MAN'S LAWYER ASSOCIATION

The report of the association for the year 1955 records a decrease of 10 *per cent.* in the number of cases dealt with, though this has not shown itself in the amount of the work at the centres There are changes in the comparative figures for different types of case. Matrimonial cases fell from 46 *per cent.* to 38 *per cent.* A marked increase occurred in hire purchase cases, on which the report makes a significant comment: " Unfortunately, we feel that this is mainly due to the incidence of

problems with regard to the purchase of television sets. It seems strange, on the face of it, that anyone should feel justified in approaching us for free legal advice on such matters, but it is a fact that they do. All our centres have had the experience during the past year of having to advise, or undertake correspondence in such cases, where it has not been felt that the applicant could be refused, although there was certainly some doubt as to the advisability of accepting such a case."

Satisfaction is expressed with the way in which the provisions of the Legal Aid and Advice Act have helped the work of the association and with the prospect of further extension. Evidently the association wants to see a sufficient number of advice centres in operation.

Appreciation of the work of conducting solicitors is expressed, and it is observed that their work is not always recognized, in view of the fact that as soon as a case is referred to them by the association it is conducted on the usual solicitor and client basis and there is no indication from that time that it is in fact a " poor man's lawyer " case.

There is much need of the help of the association in matrimonial and other cases in the magistrates' courts. The association has done all it could within its resources but has felt the need to do much more. It is to be hoped that the application of certain provisions of the Legal Aid and Advice Act may before long meet this need.

COUNTY BOROUGH OF HUDDERSFIELD: CHIEF CONSTABLE'S REPORT FOR 1955

We are glad to note that the chief constable feels able to take a reasonably hopeful view of the recruiting prospects. He refers to the reduction of working hours whereby, as from September 5, 1955, all ranks below that of superintendent now receive three rest days per fortnight instead of two, and to " a substantial increase in pay " which was awarded on December 16, 1955, which now make conditions of service far more attractive. He continues " It is hoped, therefore, that before long it will be possible to recruit the force up to its full strength."

The figures on December 31, 1955, were: authorized, 221; actual, 212. This latter figure represents a gain of 18 men during the year, and it is noted with satisfaction that the force has attracted a number of well educated men who should, with experience, be well fitted to occupy the higher ranks in the service. 1,624 days were lost through sickness during the year, compared with 1,716 in 1954. The loss due to injuries received on duty (197 days) was much heavier than in 1954 (82 days).

Another factor which should help in recruiting and retaining men is the considerable improvement in the housing situation which occurred during 1955. By the end of the year 82 houses had been completed, 10 others were under construction, tenders had been let for two more and Home Office approval has been sought for a further 12.

On the training side one interesting feature, which should make for smooth working between the different branches of the force, is that each member of the uniform branch is given a six weeks' course of C.I.D. training and a two weeks' course of training in the motor patrol department.

No less than 506¼ hours of the time of the motor patrol department was taken up by the necessary duty of escorting 279 vehicles carrying abnormal loads through the borough. How much of other road-users' time was occupied following these unwieldy and cumbersome obstructions before an opportunity occurred to pass them safely is not recorded.

The report records the results of the system of dealing with juveniles which was started by the appointment in March, 1955, of a police juvenile liaison officer. The object was to make a " more direct approach to the subject of juvenile delinquency." The chief education officer readily agreed to co-operate. A committee composed of representatives of all organizations in the borough interested in the welfare of young persons was set up, and it meets monthly to consider cases brought to its notice by the police. The object of the scheme is not to bring young children before a court, but the very opposite, *i.e.*, to prevent their getting into trouble and to assist parents, school teachers and others concerned as opportunity offers.

During the year 90 children were brought to the notice of the liaison officer. It is said that 45 had committed offences of petty stealing and the other 45 had been brought to notice by parents, school teachers and other persons as being beyond control, getting into bad company, and so on. As a number of girls were concerned, it was decided to allow a policewoman to supervise girls, under the scheme, in collaboration with the liaison officer.

The chief constable feels that the scheme is being successful and that it has certainly promoted a feeling of friendship and co-operation between teachers and the church and other welfare organizations on one hand and the police on the other hand which did not exist previously. What we are not clear about is where, how and by whom the dividing line is drawn when the question arises whether a juvenile should be taken before a court.

The report records the good work of the special constabulary for which the chief constable expresses his thanks.

Indictable offences reported dropped from 1,115 in 1954 to 935 in 1955. Of the 935, 596 were detected, which was 63·7 *per cent.*, against a detection rate of 71 *per cent.* in 1954. Juveniles were responsible for 194 of the detected crimes.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

PREMISES FOR PROSTITUTION

Mr. B. Parkin (Paddington, N.) asked the Secretary of State for the Home Department if he had considered the remarks of Judge Maude in a recent judgment concerning the letting of premises for the purpose of prostitution, and whether he would introduce a measure to amend the law on the subject.

Mr. R. R. Stokes (Ipswich) also asked whether in view of the decision in the case of *R.* v. *Silver and Others* that it was not illegal for a person to lease property solely for use of prostitution, whether the Home Secretary would consider introducing an amendment to the Vagrancy Act, 1898, whereby the licence which was thus afforded to those living on immoral earnings would be withdrawn.

The Secretary of State for the Home Department, Major Lloyd-George, replied that the judgment in the case of *R.* v. *Silver and Others* was being considered by the Departmental Committee on Homosexuality and Prostitution, and it would be wise to await its report before considering legislation.

Mr. Stokes asked whether pending the receipt of the report, the Home Secretary had taken any trouble to discover what was going on. Was he aware that rents in those areas had gone roaring up and that the criminal class was transferring their affections to those quarters as the easiest way of making a living ?

Major Lloyd-George: " I spend my time trying to find out what is going on, but I still think that in this case the best thing was to ask the Departmental Committee to consider the matter before making its report."

CONVICTED PERSONS: *EX GRATIA* PAYMENTS

Mr. Hector Hughes (Aberdeen, N.) asked the Secretary of State for the Home Department, if, where a citizen was wrongly convicted and sentenced for the alleged commission of a criminal offence and later pardoned and awarded compensation, he would take steps to ensure that such compensation was assessed upon evidence adduced publicly instead of privately.

Major Lloyd-George replied that the payments made to the three men who had recently been pardoned were not compensation in the sense of damages, since it would be wrong for the courts to assess the amount of damages if there were any question of wrongful arrest or false imprisonment. The payments were made *ex gratia* and not in discharge of any legal liability. He could not accept any suggestion that *ex gratia* payments should be assessed by some public tribunal.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Thursday, February 23

PENSIONS (INCREASE) BILL, read 2a.

BOOKS AND PUBLICATIONS RECEIVED

Archbold's Criminal Pleading, Evidence and Practice. (Thirty-third Edition) Seventh Cumulative Supplement. Edited by T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. London: Sweet & Maxwell, Ltd., 2 and 3 Chancery Lane, W.C.2.

Institute of Social Welfare. Quarterly Bulletin: Winter, 1955. Vol. 1, No. 3. (A Professional Association of Officers engaged in the Welfare Services of Local Authorities in Great Britain and Northern Ireland.) Hon. Secretary, Mr. F. D. Glover, Willaston, Ridgemount Avenue, Bassett, Southampton.

Annual Report on the Treatment of Offenders in Uganda. London: H.M. Stationery Office.

GLEANINGS FROM THE PRESS

Newcastle Journal. February 1, 1956

£20 MILK FINE WAS NEARLY £100

Stanley McDermott, of High Faverdale Farm, Darlington, who admitted selling watered milk, was fined the maximum of £20 *at Darlington yesterday. The chairman, Mr. J. Hemingway, said it was fortunate that the offence was committed before the new Act came into force on January* 1, *as the maximum penalty was now* £100.

Mr. J. C. Parks, defending, said the 16 per cent. *of water found in the milk was due to a leaking cooling machine. This was a common excuse, but only because it was a common occurrence, and that did not make it any less truthful.*

Mr. McDermott was fined £20, the maximum penalty provided by s. 79 for a first offence under the Food and Drugs Act, 1938.

Section 137 (2) of the Food and Drugs Act, 1955, provides that that Act should come into operation on the day appointed for the coming into operation of the Food and Drugs Amendment Act, 1954, immediately after that Act came into operation. S.I. 1955 No. 1898 (C.18) appointed January 1, 1956, as the day on which the Food and Drugs Amendment Act, 1954, with the exception of s. 28 (which came into operation on November 25, 1954) should come into operation.

The 1955 Act therefore came into operation on January 1, 1956. It repealed the 1938 and the 1954 Acts (s. 136 and sch. 11). It is a consolidation measure. It consolidates the previous Acts relating to food and drugs.

Section 106 of the 1955 Act provides that " a person found guilty of an offence under this Act shall, unless a special punishment for that offence is provided by this Act, be liable to a fine not exceeding £100 or to imprisonment for a term not exceeding three months, or to both, and, in the case of a continuing offence, to a further fine not exceeding £5 for each day during which the offence continues after conviction."

Mr. McDermott's offence was committed before the 1955 Act came into operation and he therefore escaped the higher penalty provided by that Act. Although the 1938 Act was repealed when the case against him was heard the prosecution continued under it by virtue of s. 38 (2) of the Interpretation Act, 1889, which provides that " where this Act or any Act passed after the commencement of this Act repeals any other enactment then, unless the contrary intention appears, the repeal shall not . . . (*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or (*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

The cases of *Director of Public Prosecutions* v. *Lamb* [1941] 2 All E.R. 499; 105 J.P. 251, and *R.* v. *Oliver* [1943] 2 All E.R. 800; 108 J.P. 30, in which it was held that, where an *amending* order in council increases the penalty which might be imposed under an existing regulation, the increased penalty might be imposed, despite the fact that the offence was complete at the time the amending order came into force, do not apply to a case such as this, in which the question is one of liability under a *repealed* statute in respect of an offence committed before the repeal.

Evening Standard. February 13, 1956

MR. BROWN'S HOOTER IS NOT THE THING

Fifty-five year old John Lawrie Brown discovered long ago that he can imitate an electric motor horn. So he does not bother to have a proper horn on his motor truck.

He has part of an old bulb horn on the seat beside him. When anything gets in the way he picks it up and blows.

Brown, who was described as a caravan tower, from Leeds, pleaded not guilty at Dronfield, Derbyshire, today to having no warning fitted to his truck.

" I have a piece of horn on the seat beside me and I consider this complies with the law," he said.

" I can imitate an electric horn and I have been able to do so since I was a schoolboy."

He pulled the horn from his pocket and asked " whether the court requires a demonstration."

The chairman, Mr. C. Calow, said, " Well, yes," and the bench winced as a deafening blast echoed round the courtroom.

But the magistrates fined Brown 10s.

Section 3 of the Road Traffic Act, 1930, provides that any person using a motor vehicle, or causing or permitting it to be used, on a road when it does not comply with the regulations applicable to the class or description of vehicles to which the vehicle belongs shall be guilty of an offence. By s. 113 (2) " a person guilty of an offence under this Act for which no special penalty is provided shall be liable in the case of a first offence to a fine not exceeding £20, and in the case of a second or subsequent conviction to a fine not exceeding £50 or to imprisonment for a term not exceeding three months."

The regulations governing the construction, weight, and equipment of motor vehicles and trailers are contained in part II of the Motor Vehicles (Construction and Use) Regulations, 1955 (S.I. 1955 No. 482). Regulation 19 of part II requires that " every motor vehicle other than a works truck, a pedestrian controlled vehicle, a locomotive, or a land tractor shall be fitted with an instrument capable of giving audible and sufficient warning of its approach or position: provided that no such instrument shall consist of:

(*a*) a gong or bell, except in the case of a motor vehicle used solely for the fire brigade, ambulance, salvage corps or police purposes, or being used for the purposes of the Land Incident Company of the Royal Army Service Corps; or

(*b*) a siren, except in the case of a vehicle used solely for fire brigade, salvage corps or police purposes."

Mr. Brown, therefore, became liable to the penalty prescribed by s. 113 (2) for using his car on the road without having it *fitted* with an instrument capable of giving audible and sufficient warning of its approach or position. The penalty prescribed by reg. 104 of the Construction and Use Regulations, by virtue of s. 111 (3) of the Act, does not apply, as that regulation relates only to part III of the regulations.

ADDITIONS TO COMMISSIONS

HANTS COUNTY

Mrs. Aline Edith Dalgety, Broomy Lodge, Linwood, Ringwood.

Alfred John Eales, Paddock House, Studland Road, Lee-on-Solent, Gosport.

Joseph Albert Gamble, Westover, Queens Road, Lyndhurst.

Mrs. Eileen Mary Garland, 119, Salisbury Road, Totton, Southampton.

Albert Joseph Ovens, 87, Oval Gardens, Gosport.

Jack Hastings Rivett, Struan, Bell Hill, Petersfield.

Major Ronald Guthrie McNair Scott, Huish House, Old Basing, Basingstoke.

Leonard James Smart, 51, Caravan Park, Winchester Road, Basingstoke.

Gerald Max Stroud, Bishearne, Liss.

Mrs. Irene Mabel Vanstone, The Rectory, Wych Lane, Gosport.

Sir Robert Bernard Waterer, C.B., Shobley House, Picket Hill, Ringwood.

Cyril Wood, Langsett, Roundmead Road, Basingstoke.

NORFOLK COUNTY

The Hon. Beryl Gladys Cozens-Hardy, Letheringsett Hall, Holt.

Lady Cicely Elizabeth Joan Evershed, The Grange, Setch, King's Lynn.

Mrs. Elisabeth Greer, Somerville, Terrington St. John, Norfolk.

Mrs. Dorothy Jones, Henstead Cottage, Shotesham, Norwich.

Mrs. Kathleen May Key, Stonegate Farm, Aylsham, Norfolk.

Mrs. Frances Isabel Kirby, Church Farm Cottage, Sporle, King's Lynn.

Col. Peter Henry Labouchere, O.B.E., Sculthorpe Old Rectory, Fakenham.

Mrs. Eunice Joan Pitts, Farlight, 8, Victoria Road, Diss.

Reginald William Scotney, 6, Astley Terrace, Melton Constable, Norfolk.

John Arthur Bland Stimpson, M.B.E., Hackford Hall, Reepham, Norfolk.

Charles William Taylor, 18, Recreation Ground Road, Sprowston, Norwich.

David Edgar Whiteside, Raynham Road, Colkirk, nr. Fakenham, Norfolk.

PERSONALIA

APPOINTMENTS

Mr. Colin Campbell has been appointed town clerk of Glossop, Derbyshire, and will take up his duties at the end of March. Mr. Campbell is at present deputy town clerk of Boston, Lincs. At Glossop he will succeed Mr. H. B. Dolphin, M.C., M.A., who is to become town clerk of Warwick in succession to Mr. H. C. F. Fillmore, *see* our issue of January 14, last. Mr. Campbell was previously assistant solicitor at Solihull, Warwick, from 1951–1954, and assistant solicitor at Stretford, Lancs., from 1949–1951. He was articled to Mr. A. D. Dean, solicitor to Crosby, Lancs., borough and Formby, Lancs., urban district, councils. Subject to the approval of the Registrar-General and the Derbyshire county council, Mr. Campbell will also become superintendent registrar for the Glossop registration district.

Mr. Thomas Hitchen, deputy town clerk of the borough of Prestwich, Lancs., has been appointed town clerk of Farnworth, Lancs. Mr. Hitchen was articled to Mr. Allan Royle, town clerk of Wigan, Lancs., after serving as committee clerk and legal assistant to Wigan county borough council. Mr. Hitchen was admitted in June, 1949, and became deputy town clerk at Prestwich in April, 1950. He will commence duty at Farnworth on March 19, 1956, succeeding Mr. Norman Mitchell, who is to become town clerk of Eccles, Lancs., *see* our issue of January 21, last. Mr. Hitchen is 42 years of age.

Mr. William Taylor has been appointed an assistant official receiver for the bankruptcy district of the county courts of Ashton-under-Lyne and Stalybridge; Blackburn; Blackpool; Bolton; Burnley; Oldham; Preston; Rochdale and Stockport.

This appointment, announced by the Board of Trade, took effect from February 6, last.

Mr. Charles Marks, assistant solicitor in the town clerk's department of the city and county borough of Worcester, has been appointed deputy town clerk in succession to Mr. E. J. Jones, who is to become town clerk of Weymouth, *see* our issue of January 21, last.

Mr. S. J. Mills, clerk to Blackrod, Lancs., urban district council, has been appointed clerk to Church Stretton urban district council, Shropshire.

Superintendent A. R. G. White who has been in charge of the Frome division of Somerset constabulary since 1946, is shortly leaving to be superintendent in charge of administration at headquarters, Taunton. Superintendent White came to Frome in 1946. He is to be succeeded at Frome by Chief Inspector A. S. Miners of Weston-super-Mare division, who has been promoted superintendent.

Mr. Hugh Michael Dewing, M.A. (Cantab.), has been appointed assistant solicitor to Bournemouth county borough council. Mr. Dewing was articled to the town clerk of Exeter and was admitted in 1954. He served later as assistant solicitor to Swindon, Wilts., borough council.

Mr. Gwilym Lloyd Thomas, M.A., has been appointed assistant solicitor to the county borough of Wigan, Lancs. Mr. Thomas served his articles of clerkship with Mr. J. E. Carson, LL.B., clerk of Cardiganshire county council. The vacancy was created by the promotion of Mr. J. A. McDonald, the previous holder of the post, to the position of senior assistant solicitor.

Mr. Rex Taylor, deputy coroner for West Cheshire, is to be coroner, in succession to Mr. G. W. Wain, who resigned in November.

Mr. W. J. Jefferies, a senior court clerk at the Victoria Law Courts, Birmingham, has been appointed deputy clerk to Birmingham justices, as from April 1, next, consequent on the appointment of Mr. F. D. Howarth as clerk to the justices in succession to Mr. T. M. Elias who retires on March 31, *see* our issue of January 14, last. Mr. Jefferies has been an active member of the National Association of Justices' Clerks' Assistants—as a member of the Joint Negotiating Committee for Justices' Clerks' Assistants, and as chairman of the association's Law Committee.

Mr. Graham Harrison, who passed the Law Society's Final Examination in November, 1955, will commence his duties as assistant solicitor in the office of the clerk of Middlesex county council, Mr. Kenneth Goodacre, T.D., on March 1, next. Mr. Harrison was previously with Montgomeryshire county council and, from 1937-1949, in the service of the Leicestershire county council.

ANNIVERSARY

Mr. Percy Nickson, M.A. (Oxon.), has completed 25 years as clerk to the justices at Beaconsfield, Bucks. Mr. Nickson was admitted in May, 1928.

Mr. E. C. Featherstone, assistant clerk to the justices of the petty sessional division of Slough, Bucks., completed 25 years' service in that office on February 1, 1956, having served under five part-time clerks and one whole-time clerk: Mr. Joseph Davies, the present clerk. Suitable tributes to his great experience and helpfulness were paid in court on February 1 by the chairman of the magistrates, Mr. Davies, a previous part-time clerk, and Chief Superintendent B. Lord.

RESIGNATION

Dr. W. H. Morgan, recently appointed coroner for East Glamorgan, has withdrawn from the position.

OBITUARY

Mr. J. W. Orr, former stipendiary magistrate for Manchester, has died at the age of 77. Mr. Orr was educated at St. John's College, Cambridge, where he took a degree in history in 1901. In the same year he entered the Middle Temple and was called to the bar in 1904. Mr. Orr practised on the London and South-Eastern Circuit for 23 years from 1904. In 1927 he became stipendiary magistrate for Manchester, his native town. He retired in 1951, after 24 years' service. While at Manchester, Mr. Orr was a member, in 1931, of the Home Office departmental committee on persistent offenders.

Mr. Stephen Reginald Hobday, a former clerk of the board and general manager of the Lee Conservancy Board and clerk of the Lee Conservancy Catchment Board, has died at the age of 80. Mr. Hobday retired in 1948. He was a former chairman of the National Joint Council for the Inland Waterways Industry and a member of the Central Advisory Water Committee. He was a chairman of a sub-committee of the latter body whose recommendations led to the passing of the Rivers (Prevention of Pollution) Act, 1951. Mr. Hobday was called to the bar at Gray's Inn in 1901.

Mr. Elliot Barnard Allard, former deputy coroner for East Kent and Canterbury, has died at the age of 44.

REVIEWS

Rayden's Practice and Law in the Divorce Division. Second Cumulative Supplement to Sixth Edition. By F. C. Ottway and Joseph Jackson, M.A., LL.B. (Cantab), LL.M. (London). London: Butterworth & Co. (Publishers) Ltd., 88 Kingsway, W.C.2. Price: Supplement alone 11s. 6d., postage extra. Combined price 87s. 6d. net.

One indication of the importance of this cumulative supplement is the fact that in the first supplement the table of cases ran to four and a half pages, while in the second it occupies nine pages. The rest of the supplement is enlarged by some 30 pages. It is indeed an indispensable supplement to a much valued textbook.

The developments in the law are noted up to October 4, 1954, but one later case, *Galloway* v. *Galloway* [1955] 3 All E.R. 429, was inserted when press proofs were being dealt with. This decision of the House of Lords on a question about the meaning of the word children in a statute as including illegitimate children marked so significant a change in interpretation that it was fortunate that there was just time to include it and make the supplement so up to date. The supplement also includes all the relevant additional statutes, rules and regulations since the sixth edition of the main volume was published, some of them of a later date than the first supplement.

Employer's Liability at Common Law. Third Edition. By John Munkman. London: Butterworth & Co. (Publishers) Ltd. Price 35s. net.

This is the third edition of a book which had already proved itself useful, in spite of the large field now covered by the legislation concerning benefits in case of industrial injury, superseding the old

Workmen's Compensation Acts. There are still many cases where the injured employee can properly be advised to start common law proceedings, and the principles to be borne in mind in giving that advice are conveniently set out in Mr. Munkman's book, together with a good deal of detailed information on particular trades. The law is stated as at the end of September, 1955, but the author has incorporated in his preface a warning that the Mines and Quarries Act, 1954, which is treated in the book as operative, has in fact, contrary to expectations, not yet been brought into force. The historical development of the law of employers' liability is traced, with special reference to some developments which occurred in Scotland and in due course had their influence elsewhere. The doctrine of common employment (it appeared) had not been held to apply in Scotland, but in the mid-Victorian period the law was assimulated throughout Great Britain by judicial decisions, although at the same time the House of Lords recognized that the employer had certain fundamental duties. From this point the trend of legislation and decision is traced up to the present day. The modern place of negligence in the law of torts is dealt with, and the relation of this to the law of master and servant is examined. From the duty of the employer the book passes to the liability of third parties, and the effect of breach of statutory duty upon civil rights. So far the contents all fall within the scope of the title of the book, but thereafter the author examines, for the purposes of breach of statutory duty, the provisions of the Factories Act, 1937, and the statutes and regulations covering several different trades. Contributory negligence and the voluntary assumption of risk came later. We are not sure that this arrangement may not be open to criticism on grounds of logic, but there need be no practical inconvenience once the reader has grasped that the general principles of negligence and the doctrine of contributory negligence occur in different parts of the book, separated by detailed treatment of provisions bearing upon, but not forming part of, common law. The provision of the chapters on specific occupations are always liable to change; the main principles of the law as stated here, will, however, continue to be useful, whatever changes are made by Parliament in the penal statutes, in relation to master and servant, as will the learned author's accurate analysis of various cases which have drawn fine distinctions between different circumstances. A good deal of the book has been re-written since the previous edition, and in its present form we have been impressed by the care taken to weld the newest decisions (which are pretty numerous) into the text as it stood before. Whatever detailed changes may be made in legislation, we prophesy a good spell of usefulness for this edition of the book.

Shawcross and Beaumont on Air Law. Second (Cumulative) Supplement to Second Edition. Christopher N. Shawcross and K. M. Beaumont. Butterworth & Co. (Publishers) Ltd. London. 1955. Supplement alone £2 2s. Combined price £7 7s.

The law relating to air travel and air transport is one of the branches with which most of our own readers are, at first sight, not especially concerned. Nevertheless, some of them may have to advise local authorities upon problems relating to aerodromes and the landing of aircraft; others as clerks to magistrates may have to deal with contraventions of air law, so far as these are cognizable in courts of summary jurisdiction. Like other members of the public they may be travellers by air, and like other lawyers they may have to advise upon the legal aspect of contracts for carriage by air, remembering here that the ordinary law of contract has been modified to agree with international conventions. The main work to which this is a supplement appeared rather more than five years ago, and we reviewed it at the time. This cumulative supplement brings it up to date as at October 31, 1955. In the interval there have not been many cases within the scope of the book decided by the English courts, and looking to the shape that air law has assumed it is hardly to be expected that it will be greatly enriched by judical decision, in the same way as maritime law. Nevertheless, there have been interesting cases decided in other countries of the Commonwealth and in the United States, where topographical conditions give greater importance than in the United Kingdom to air transport, and the learned authors have drawn upon this source for elucidating the written law. That law is generally comprised in international conventions, directly or indirectly applied by domestic legislation, and it is possible that an international court for hearing cases under air law may come into being before long.

Since the main work appeared, there have been at least three international conferences for considering air law, only one of which had, up to the time the supplement went to press, become internationally binding, although the Chicago Convention of 1954 produced protocols which were accepted in this country early in 1955, and may be expected in due course to become part of the operative code. In addition to these matters, the learned authors have included the new conditions of contract agreed upon by the International Air Transport Association, which make substantial modifications of ordinary English law in this sphere.

Turning from the law of contract, one finds also that there are several Orders under the Civil Aviation Act, 1949, imposing requirements upon aircraft and their crews, or modifying requirements previously in force. The learned authors have also collected the Orders in Council applying various provisions to overseas territories of the Crown. It will therefore be seen that, for those who are concerned with air law, there is plenty of material in the book, even though it be in form a supplement.

Part I contains notations, linked to paragraphs of the main work, bringing its statements up to date in the light of legislation and a number of American and Commonwealth decisions. The authors have also, where they thought it helpful, collected material articles by legal writers, in magazines devoted to aviation and to allied subjects. Bearing in mind that before long cases may fall to be argued before an international tribunal, those interested may find that a practice is adopted of listening to the opinions of jurisconsults, perhaps even in preference to following judicial precedent in the English manner.

After annotation of the main work, there will be found some additions to the appendices therein, of which the most important is the Rome Convention on damage caused by aircraft to property on the surface. There is also an interesting note, rather aside from ordinary legal matters, upon the relation between the statutory Air Corporations and other firms desiring to operate air services. The second half of the book consists, broadly speaking, of statutory rules and orders and statutory instruments relating to civil aviation, which are remarkably detailed and comprehensive. Of these perhaps the most important to our own readers are the Public Health (Aircraft) Regulations, 1952, but, as the practice grows of travelling and consigning goods by air, it is difficult to foresee any sphere of the lawyer's interests which will remain untouched. It therefore seems desirable for all who are engaged in legal practice, either officially or privately, to keep their bookshelves up to date upon developments in air law. In this connexion it may be noted that the combined price of the main work and the supplement is £7 7*s.*; the supplement alone is £2 2*s.*

Civil Defence Questions Answered. Seventh Edition. Jordan & Sons, Ltd. London: Price 4s. 6d. net.

This little book began life in 1940. It ran through five editions and numerous reprintings in the war years, and this is the second time it has been revised in the light of preparations for war in modern style.

It does not profess to be a substitute for the *Civil Defence Manual of Basic Training* issued from the Home Office; rather is it a simple and easily comprehensible adjunct to that and other government publications. In form it is a catechism, beginning with rudimentary questions and working up to chemical and biological warfare. It ends with elementary first aid.

We have been impressed with its completeness, and still more by the skill with which the compilers lead the student onward, from the elements to comparatively abstruse matters like gamma rays and fission fall outs. Between these extremes, he will find enough instruction for most practical purposes, upon fire-fighting and high explosives, and other conventional activities of war on the home front.

A workmanlike and useful little book, well worth its modest price.

Lumley's Public Health Acts. Twelfth Edition. Supplement. K. T. Watson. Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. London. 1955. Price £5 5s.

The main volumes of *Lumley* were completed in 1954 and the general index appeared early in 1955. The need for a supplement to appear so soon arises from the fact that vol. I had been published in 1950, and the next four volumes at the rate of one a year. The size of the supplement, which contains more than 1,000 pages, shows how active Parliament has been in the past five years. The statute law is stated as at June 30, 1955, but where practicable, later information has been added. The book is broadly on the same lines as the familiar supplements issued by the same publishers for other major works. That is to say, part I contains a noter-up for all the seven volumes. Incidentally, we spoke above of the date of appearance of vols. I to V, but it will be remembered that vols. VI and VII (which contained subordinate legislation and ancillary matter) appeared out of turn, so that there is more for the supplement to do in the way of bringing those volumes up to date than there is in regard to the annotated statutes in the other volumes. No well conducted local government office is at the present day without its *Lumley*, and the same is true of the larger and better stocked public libraries. Professional and other users of the main work should invariably refer also to the noter-up; this is the only way to make sure whether the law as stated in 1950 (or as the case may be) has since been altered. The changes noticed extend not merely to the text of the statutes and statutory instruments, but have, where necessary, been carried out also in the editorial notes.

Part II of the work consists of additional statutory instruments and circulars issued since vols. VI and VII appeared. It may be

mentioned that there are two new titles, namely, "Rag Flock" and "Rivers" in this part. There is also an appendix containing the Midwives Act, 1951, and the Cremation Act, 1952, which missed their appropriate places in the main volumes.

When dealing with a work of this sort it is scarcely practicable to review it, otherwise than by enumerating salient features, as has been done above. Its quality can only be tested in use, but we have no doubts on this score, and confidently advise that it be added to the shelf where *Lumley* sits, in the office of the local government practitioner and in the public library—we should like to think, also, in the office of every private practitioner doing substantial business, since he may at any time be confronted by a client with questions which could be answered by reference to *Lumley*.

The price of £5 5*s*. may seem high for a merely supplementary volume, but the subject matter is of such increasing importance to every member of the public, and the field covered so much beyond the capacity of the ordinary man to hold in memory, that it is really important to the carrying on of legal work, in relation to local government, to keep up to date by obtaining the book. The price of the main work and the supplement together is £42 10*s*. Crudely stated this looks a lot of money, but in reality it is comparatively little, seeing that *Lumley* is in effect the universal standby in matters of public health and local government.

Law Relating to Animal Welfare. By the Hon. Parliamentary Secretary of U.F.A.W. Published by Universities Federation for Animal Welfare, 7a Lamb's Conduit Passage, London, W.C.1. Price 6d.

This is a brief summary of the most important statutory provisions dealing with the treatment of animals and birds. Many sections are quoted in full and there are some comments on such matters, for example, as hunting the fox, coursing the hare, and using spring traps. No one need fear that the Federation is over-sentimental. It is dead against cruelty in all forms when it is convinced of the cruelty. This is a valuable and inexpensive little pamphlet occupying only 28 pages complete with index.

SELF-EXPRESSION

There is a well-known story—perhaps apocryphal—about Robert Browning, who is said to have been asked by an admirer to explain the meaning of a more than usually obscure passage in one of his poems. The reply, if not elucidatory, was at any rate candid: "When I wrote that, only God and myself knew what it meant. Now only God knows!"

This anecdote, whether true of Browning or not, is of topical interest, since it is symptomatic of a common present-day attitude to creative art. The poets, painters and musicians exhibit a regrettable tendency to make up for their shortcomings in fertility and talent by cultivating a sterile intellectualism. Obscurity takes the place of profundity, and eccentricity is made a substitute for genius. Their admirers and disciples pursue a conventional unconventionality which is almost a uniform. Among them a studied carelessness in personal hygiene and attire—the lank-visaged, tangle-haired and duffel-coated school—intended to give an impression of aesthetic sensibility, succeeds only in being exhibitionist; among the practitioners a deliberately cultivated indifference to form and perspective, sense and rhythm, harmony and key, only arouses (in the minds of the ordinary observer) doubts of their knowledge of, and ability to apply, the simplest elements of the art they profess to practise.

The greatest masters had an infinite capacity for taking pains; the clarity and simplicity of the finished product conceal the forethought, the selectivity and the deliberation that have gone to perfect the means employed. *Ars est celare artem.* Analyse a short passage of Shakespeare, a few bars of Bach, one corner of a Rembrandt painting, and you will find fathomless depths beneath the seeming facility of the technique. Penetrate (if you can) the inspissated obscurity that surrounds the work of so many modern dabblers in the arts, and you will discover little or nothing behind.

The "poet" whose verses are unintelligible without reference to pages of explanatory notes; the composer of "programme-music" whose cacophonies require a running commentary of exposition—these are bad enough; but the addict of pictorial symbolism is perhaps the worst of all. A canvas quartered like a coat of arms—a series of wavy lines and distorted geometrical figures, in purple and green, surmounting a human eye in black and red, flanked on the one side by a row of brown gasometers, and on the other by a fried egg in natural colours—that sort of thing will provoke enthusiastic adulation among the disciples of the modernists. "Fascinating!" they will exclaim, standing at a respectful distance, with heads slightly tilted and eyes half-closed; "Such a daring use of colour! And what a refreshingly new sense of form!" New it certainly is not, whatever other description it may deserve. Dear old John Tenniel (who died in 1914 at the ripe age of 94) did this kind of thing far better than any of the moderns—particularly in his illustrations to the first (1871) edition of *Through the Looking-Glass*. The Slaying of Jabberwocky is nobly portrayed; the gloom of the Tulgy Wood in the background, the magic of the Vorpal Sword, are subtly suggested; and the figure of the Whiffling Monster conveys a vivid impression of primitive ferocity. To read the poem it was necessary to hold it up to a looking-glass, and Alice's reactions are exactly in point:

> "It seems very pretty," she said, when she had finished it, "but it's *rather* hard to understand." (You see, she didn't like to confess, even to herself, that she couldn't make it out at all.) "Somehow it seems to fill my head with ideas—only I don't exactly know what they are!"

Lewis Carroll's master-touch is his invention of Looking-Glass Language, which has to be read in reflexion, back to front. Here he prophesied more truly than he knew. Towards the end of last year the Walker Art Gallery of Liverpool exhibited a "highly abstract painting," priced at fifty guineas, and alleged to depict (if that be the right expression) "Stone Shelters in North Wales." After it had been on exhibition for some time, and received its due meed of admiration and applause, a horrible doubt arose. Like the naive child in Hans Andersen's story of *The Emperor's New Clothes*, some simple viewer dared to voice a question which "started a long and serious discussion among the critics as to whether the picture was the right way up or not." Only when it was unscrewed from the wall, and the back examined, was it conclusively demonstrated that it had been hanging upside-down. The artist took it all in good part. He had "tried to put into the picture the quality you meet in stone walls, which is absolutely terrific." But the painting was "quite abstract," and he did not in the least blame the gallery officials for their mistake. The secretary said the artist was an "expressionist." "He is very *advanced*"—and added, as if the italicized word explained everything, "It is very difficult at times to tell one end of a picture from the other."

An epilogue to this story comes from Stockholm. A well-known collector invited his friends, including several critics, to a private view in his home. They paused before one particular painting, murmuring over its "interesting" technique and "sensitive" style. The customary epithets—"abstract," "surrealist," "expressionist," "symbolistic," were bandied about. All were agreed that the picture (in the modern idiom) had "got something"; but all, like Alice, were uncertain what that something was. None of them could conclusively identify the artist, until the host, opening the door of the adjacent studio, showed him busily at work with palette, brush and canvas. He was a Rhesus monkey, and he was hugely enjoying himself.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Gaming—*Fraud in wagering—Gaming Act*, 1845—*Debtors Act*, 1869.

I shall be very much obliged if you will give me your valued opinion as to an offence or otherwise arising out of the following circumstances.

A is a serving member of the Royal Air Force attached to an R.A.F. station at D. He opens an account with a commission agent and from time to time, almost daily, bets. At the outset he has winning bets and is paid his winnings. He eventually strikes a losing period and continues to bet until he is owing the bookmaker about £30. He does not bet again with this bookmaker but opens an account with another one in the town and does the same thing. At the outset he wins money and is paid out. When he strikes a losing period again he abandons this bookmaker when he is owing about £25. He is then moved to L, and opens an account with a bookmaker there. He leaves him when he is owing money and goes to another bookmaker at N, where the same thing occurs.

I appreciate that a bookmaker has no redress under civil law but in this case I am of the opinion, an opinion which no one else seems to share, that he has committed an offence against s. 13 of the Debtors Act, 1869. I maintain that he incurs these debts by fraud and that evidence of the fraud is to be found in the fact that he goes from one bookmaker to another after incurring the debt and that it would be possible to prove a fraudulent system from this. In addition I might add that the man concerned is a leading aircraftsman, a married man and yet he was betting in stakes of £5 and £10.

I shall be obliged if you would quote any law on the subject.

SWINDLE.

Answer.

As the debts are null and void, the transactions do not come within s. 13 of the Debtors Act, 1869; *R.* v. *Leon* [1945] 1 All E.R. 14; 109 J.P. 58. If the evidence is sufficient, charges can be preferred under s. 17 of the Gaming Act, 1845, *R.* v. *Leon, supra.*

2.—Larceny—*Simple larceny—Common law and statute.*

May I ask you (*see* 119 J.P.N. 474) to pursue the question as to whether simple larceny is a common law offence or a statutory offence, by answering the following specific questions ?

1. Is not the common law offence of larceny restricted to goods which are personal ?

2. If so, should not such offences be charged as "against the Peace, etc." and other simple larcenies as "contrary to the Larceny Act, 1916, s. 2" ?

3. Can there be any valid objection if I issue summonses for simple larceny as being "against the Peace" and "contrary to the Act" ?

SARROW.

Answer.

1. It was so, as was stated in the earlier editions of *Stone* and other textbooks. *Archbold*, 33rd edn., p. 532, states that larceny both at common law and by statute has been consolidated by the Larceny Act, 1916.

2. We do not think that such a distinction can be drawn, and it is difficult to think of an instance of simple larceny of property which is not personal.

3. We see no objection. At the worst, the reference to s. 2 of the Act is surplusage. It is certainly useful to the defendant to have it cited.

3.—Licensing—*Permitted hours—Fixing so as to secure uniformity where petty sessions area enlarged by order of Secretary of State.*

Parishes A, B, C, D, E, and F are in the petty sessional division of X. Parishes J, K, L, M, and N, are in the petty sessional division of Y, adjoining that of X. The licensing hours in divisions X and Y are not the same. By an order, J, K, L, M, and N, will be transferred to X on October 1, next. Such order provides, *inter alia*, that the licensing hours of the transferred parishes, J, K, L, M, and N, shall continue as at present until the coming into operation of an order made under part VII of the Licensing Act, 1953, by the justices for the enlarged division at the next general annual licensing meeting.

The Licensing Rules, 1921, still in force under the 1953 Act provide for the insertion of advertisements in local papers of any change in the licensing hours. Does this provision apply in circumstances such as the foregoing, and are advertisements necessary. Your attention is drawn to *Paterson*, 1955 edn., p. 1247, which appears to be an authority for assuming that advertisements are necessary only when there is to be a change of hours for a whole division.

N. IBEX.

Answer.

It is necessary to advertise notice of the proposal as required by r. 4 of the Licensing Rules, 1921. The form contained in the schedule to the rules should recite that the proposal is made to give effect to the requirements of the order of the Secretary of State.

See our answer to P.P. 4, at 119 J.P.N. 226.

4.—Licensing—*Structural condition of "old" on-licensed premises.*

My licensing justices have recently visited every "on" licensed house in the division and though most of the premises are well kept, my justices consider that in some instances work is required to be done to those parts of the premises other than those parts where intoxicating liquor is sold or consumed and in particular in some instances they consider that the accommodation provided for the licensee is inadequate, and in others that the sanitary arrangements are inadequate. The licensed premises concerned are "old on-licences" within the meaning set out in s. 14 (1) of the Licensing Act, 1953.

A meeting of the licensing committee is to be held shortly to consider these premises, and I have been studying ss. 12 and 14 of the 1953 Act.

Section 12 authorizes licensing justices on the renewal of an "on" licence to order structural alterations in the part of the premises where intoxicating liquor is sold or consumed to secure the proper conduct of the business.

Section 14 of the Act, however, provides that licensing justices shall not refuse to renew an "old on-licence" except on certain grounds set out in the section, one of which is that "the licensed premises have been ill-conducted, or are structurally deficient or structurally unsuitable."

I am concerned about the words "structurally deficient or structurally unsuitable" used in s. 14. Is it your opinion that these words are more general in their scope than those used in s. 12 (which restricts the structural alterations to that part of the premises where intoxicating liquor is consumed)? Do you consider that the words used in s. 14 refer to the condition of the licensed house generally, *e.g.*, the bad state of repair of the outside walls, dampness in the assembly room and licensee's living quarters, inadequate sanitary accommodation and inadequate accommodation for the licensee, and that if the owners refused to carry out the repairs which the justices consider necessary, the justices could refuse to renew the licence?

N.J.E.L.

Answer.

The power of licensing justices to make an order requiring structural alterations to be made in licensed premises contained in s. 12 of the Licensing Act, 1953, is limited to "the part of the premises where intoxicating liquor is sold or consumed." In *Bushell* v. *Hammond* (1904) 68 J.P. 370, this was held to include a passage giving access to the part of the premises where there was sale or consumption, but there is no decision of the High Court indicating that the licensing justices' powers to require structural alterations are wide enough to include desirable alterations to the part of the premises set apart for the private use of the licence holder.

Section 14 (4) (*a*) of the Act empowers licensing justices to refuse renewal of an old on-licence on the ground that the licensed premises are structurally deficient or structurally unsuitable, and, in our opinion, the expression as used in s. 14 is much wider in scope than the expression used in s. 12. The structure of the whole premises may be considered. But a line must be drawn between structural deficiency or unsuitability and deficiencies resulting from dilapidations. If, in the true view, the premises are structurally adequate but have been allowed to fall below the minimum standard of suitability that the licensing justices require, the proper procedure would be to refer the licences on this ground to the compensation authority.

The local authority have power to require the provision of a reasonable number of sanitary conveniences: *see* s. 89 of the Public Health Act, 1936.

5.—Magistrates—*Practice and procedure—Friendly Societies Act*, 1896, *s.* 87 (3)—*Steps to enforce order for payment of money unlawfully withheld.*

In March this year A appeared before the justices on an information laid by B, C and D, trustees of a working men's club and institute, which alleged that he had unlawfully withheld certain property, namely, the sum of £117 14*s.* 5*d.* of a duly registered friendly society, namely, the said working men's club and institute, in his possession, contrary to s. 87 (3) of the Friendly Societies Act, 1896. Both the trustees and the defendant were represented at the hearing. No evidence was given to show that A acted with any fraudulent intent, and the court ordered that A should repay the sum of £63 through the court at the rate of 10*s.* per week. No order was made as to costs.

The order was served personally on A. It contains no mention of the rate of payment ordered or that payment should be made through the court. A has made no payment and a registered letter to his last known address was returned. It is nevertheless believed that he is working and that he could be traced by the police.

The order is enforceable as a civil debt and recoverable summarily before a court of summary jurisdiction.

I shall be most grateful for your advice on the following points:

1. Is the next step a complaint under s. 50 of the Magistrates' Courts Act, 1952, for an order to pay the amount now due, followed, if necessary, by a judgment summons?

2. Must the complaints in the above circumstances be laid by B, C and D or may they be laid by the clerk to the court?

3. As this is a civil debt no warrant can be ordered to compel A's attendance. If A does not attend the hearing of the judgment summons it is assumed that, subject to satisfactory proof of means, he can be committed to prison in his absence. Will you kindly confirm?

J. SARO.

Answer.

1. No. The next step is a complaint for a judgment summons under s. 73, Magistrates' Courts Act, 1952 (*see R.* v. *Graham-Campbell, ex parte Greenwood* (1922) 86 J.P. 5).

2. By B, C and D.

3. Yes, we agree. Regard must be had to r. 48, Magistrates' Courts Rules, 1952, which provides for the service of a judgment summons.

6.—Nuisance—*Starlings and house-pigeons roosting under gables—Summary remedies.*

In this borough there is a terrace of four houses which are affected by starlings roosting under the front gables. I am informed that they cause considerable mess and possibly some damage. The owner of the property does not live in any of the houses, but one of the occupiers has drawn the attention of the local authority to the position and requested help. So far as I am aware, nobody has done anything to encourage the presence of the birds and possibly the residents would be glad to see them go. The corporation would like to treat the condition as a statutory nuisance under s. 92 (1) (*b*) of the Public Health Act, 1936, but can the starlings be said to be "kept . . . in a place"? My own view is that the birds, having arrived with no encouragement from anyone, are not a statutory nuisance since nobody, least of all the occupiers or the absentee landlord, is "keeping" them. As an alternative to an abatement notice the corporation might proceed under s. 93 (*b*). Again my view is that any action taken would be *ultra vires* the section, as the matter does not rank as a statutory nuisance. Assuming the matter is a nuisance, can it be said that the owners or occupiers are in default or that the conditions exist with their sufferance? Your comments will be appreciated. The same trouble exists from house-pigeons that have become semi-wild and do not belong to anybody. In the case of these birds there is a complication by reason of s. 23 of the Larceny Act, 1861. The mere killing amounts to a technical offence, and therefore I assume that in these circumstances and apart from any other consideration a local authority could hardly regard the existence of these birds as a statutory nuisance to be dealt with in accordance with the procedure laid down. It should be mentioned that the corporation have no private Act powers.

BLUEBIRD.

Answer.

We consider it plain beyond argument that s. 92 (1) (*b*) does not apply; these animals are not "kept" by anybody. We can just conceive that, if the droppings became serious enough, it could be argued that the premises were in such a state as to be a nuisance, within s. 92 (1) (*a*), but the only step open to the council would then be under s. 93, proviso (*b*). They could probably wire the eaves in such a way as to defeat the migrant starlings. The complaining householder might do this himself: why expect it to be done at the ratepayers' expense? The wild (or semi-wild) pigeons are a different problem, both because they are not migratory and because of the Larceny Act, 1861: it was, we believe, partly because of this that some local authorities have obtained local Act powers. Probably the practical risk if the council kill some off is slight; also, some of their haunts could be wired, as for starlings. But we are clear that the householders patronized by these visitors (English or migrant) cannot be held responsible.

7.—Probation—*Requirements—Disqualification for keeping animals—First conviction of cruelty.*

The penalty for causing suffering to an animal under s. 1 of the Protection of Animals Act, 1911, is limited to £50 and/or three months. For a second offence the Protection of Animals (Amendment) Act, 1954, s. 1 (1), gives justices power to disqualify the defendant from keeping animals. Is it in order for justices when dealing with a first offence to ask the defendant to agree to the making of a probation order against him containing a condition not to keep animals for the period of the order?

S. IGNOTUS.

Answer.

We see no objection to the requirement, which is certainly such as to be likely to prevent the repetition of this kind of offence. The fact that on a first conviction the court could not disqualify the defendant, without his consent, appears to be no reason why he should not, with his consent, be required not to keep animals during the period of the probation order. If he is not willing to comply with such a requirement, he can decline to submit to it, and the order could not then be made in those terms.

8.—Road Traffic Acts—*Speed limit of goods vehicles—Effect of the 1955 Variation of Speed Limit Regulations.*

I shall be obliged for your valued opinion on the effect of the above regulations which bring dual purpose vehicles into the same category as passenger vehicles, on the speed limit of goods vehicles. The practical effect of the case of *Blenkin* v. *Bell* [1952] 1 All E.R. 1258; 116 J.P. 317, was that before a goods vehicle under three tons in weight became subject to the 30 m.p.h. speed limit, it must (*a*) be a properly authorized vehicle under the Road and Rail Traffic Act, 1933, and (*b*) carry goods at the time of the alleged offence.

I shall be obliged if you will kindly let me know whether, in your opinion, these two conditions must still be satisfied in order to render a goods vehicle subject to the speed limit outside built-up areas.

JAERN.

Answer.

The 1955 regulations revoke those of 1950, and provide expressly that sch. 1 to the 1930 Act (as substituted by the 1934 Act) *shall have effect as if the* 1950 *regulations had not been made.*

The cases of *Blenkin* v. *Bell, supra*, and *Woolley* v. *Moore* [1952] 2 All E.R. 797; 116 J.P. 601, were concerned with the interpretation of para. 2 (1) (*a*) of the said sch. 1 *as amended by the* 1950 *regulations*. Now that para. 2 (1) (*a*) has been restored to its original form those cases are no longer in point, and goods vehicles (for definition *see* the beginning of the said para. 2) which come within para. 2 (1) (*a*) are at *all* times subject to the 30 m.p.h. limit imposed by that paragraph whether they are carrying goods or not.

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